BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PLEASANT VALLEY SCHOOL DISTRICT - CAMARILLO.	OAH Case No. 2017030694 ORDER DENYING MOTION FOR STAY PUT

On March 14, 2017, Student filed a request an expedited hearing (complaint) with the Office of Administrative Hearings, Pleasant Valley School District – Camarillo. The complaint contained some issues that were expedited, i.e., related to a disciplinary action against Student in February 2017, and other issues that were unexpedited, i.e., allegations that Student was denied a free appropriate public education since at least January 2016. OAH issued a scheduling order containing dates for mediation, prehearing conference, and hearing for the expedited portion of the case, and later dates for mediation, prehearing conference and hearing for the unexpedited portion of the case.

Student's complaint also requested an order from OAH that Student be permitted to stay put at the Pleasant Valley middle school he attended until February 21, 2017, when he was removed for disciplinary reasons. On March 20, 2017, Pleasant Valley filed a opposition to the motion for stay put on grounds that a manifestation determination individualized education plan team meeting held on February 28, 2017, was also an annual review IEP team meeting concerning Student, and Mother consented to a change of placement for Student to home/hospital instruction, pending placement at a nonpublic school.[1] On March 23, 2017, Student filed a response to Pleasant Valley's opposition.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education

[1] Pleasant Valley also filed a motion to unexpedite the expedited portion of the case on the same date which will be ruled upon in a separate order.

program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

When a child violates a code of student conduct and school personnel seek to order a change in placement that would exceed ten school days, the local educational agency, the parent, and the relevant members of the IEP team shall determine whether the conduct was a manifestation of the child's disability. At a manifestation determination IEP team meeting, a parent may agree to a change of placement for the student, notwithstanding a determination that the behavior complained of was a manifestation of the student's disability. (34 C.F.R. § 300.532 (f)(2).) A child's parent may appeal the manifestation determination concerning the student's conduct by requesting an expedited due process hearing.[2] (20 U.S.C. § 1415(k); 34 C.F.R. § 300.532).) However, there is no statutory or regulatory authority for an administrative law judge or hearing officer to order the return a disciplined student to his prior placement pursuant to stay put when an expedited hearing is pending.

The Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 et seq.) and its implementing regulations (34 C.F.R. §§ 300.1 et seq.) as well as California's implementing statutes and regulations (Ed. Code §§ 56000 et seq.; Cal. Code Regs. tit. 5, §§ 3000 et seq.) do not contain any provisions that provide guidance to school districts when more than one person holds a student's educational rights. For example, if both parents hold educational rights, the consent of only one parent is required to implement an IEP, or permit a school district to conduct assessments. A parent who disagrees with the other parent's decisions may contest that action in a court of competent jurisdiction, but OAH is not such a forum.

DISCUSSION

Student was enrolled in Pleasant Valley during the 2015-2016 and 2016-2017 school years because that is where Mother resides. Father lives in Los Angeles County. There is no dispute that Parents are co-holders of Student's educational rights but do not live together.

Student was suspended from Pleasant Valley on February 21, 2017, due to an incident where he allegedly pushed a teacher. The parties attended a meeting on February 28, 2017, which is referred to as a manifestation determination meeting by both parties, but also characterized as an annual IEP team meeting by Pleasant Valley. Father disagrees that the

[2] In such cases, "the State or local education agency shall arrange for an expedited hearing." (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c).) The expedited hearing shall occur within 20 school days of the date the hearing is requested. (*Id.*)

meeting was also an annual IEP team meeting. Mother and Father both attended this meeting.

There is no dispute that a document from that IEP team meeting contains a finding that the IEP team found that the incident of February 21, 2017, was a manifestation of Student's disability[ies]. However, Father disputes the reasoning behind that finding. Pleasant Valley argues that because the meeting of February 28, 2017, also constituted an annual review, Mother's consent to the resulting IEP document placing Student on home/hospital instruction pending placement at a nonpublic school makes that Student's stay put placement. Father, in his response to Pleasant Valley's opposition disagrees with the characterization of the meeting as an annual IEP.

There is no need at this juncture to determine whether or not the meeting of February 28, 2017, was indeed an annual IEP team meeting. Mother had the authority at the manifestation determination IEP meeting on that date to agree to a change of placement to a nonpublic school with home/hospital instruction pending placement there, as she did. At a due process hearing Father will have the opportunity to present evidence concerning his dispute with Pleasant Valley about the appropriateness of this placement that Mother agreed to, but the last agreed to placement pursuant to an IEP is the placement Mother agreed to on February 28, 2017. Therefore, stay put is not an available remedy, and Student's motion for stay put is denied.

ORDER

Student's motion for stay put is denied.

IT IS SO ORDERED.

DATE: March 24, 2017

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings